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UNCLAS BRATISLAVA 000212

SIPDIS

DEPARTMENT FOR EUR/NCE MCKNIGHT AND EB/IPC:WILSON

DEPT PLEASE PASS TO USTR FOR BPECK  
USDOC FOR KSCHLEGELMILCH  
USPTO FOR JURBAN/DASHLEY-JOHNSON  
LOC FOR TEPP

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [XG](#) [LO](#) [IPR](#)

SUBJECT: 2003 SPECIAL 301 REVIEW FOR SLOVAKIA

REF: STATE 43420

1. Summary: Slovakia has enacted nearly all of the intellectual property legislation required by TRIPS, and the overall IPR situation has improved from a historical perspective. However, a lack of IPR protection for pharmaceuticals caused Slovakia to be placed on the Special 301 Watch List in each of the past three years and there is little evidence that the situation has improved adequately. Problems related to general patent protection, especially data exclusivity, continue to be an issue because it is unclear which department of the GOS has responsibility. Piracy of optical and other visual medias remains minimal, but home "burning" of CD's has likely increased. The Ministry of Interior (MOI) and the police have an independent office dedicated to computer-related crime. Although GOS offices and large companies predominantly use licensed software, experts say entrepreneurs and small- and medium-size enterprises continue to use pirated software. The sale of counterfeit trademarked goods is minimal. Due to problems in the pharmaceutical area we recommend that Slovakia remain on the Watch List unless the GOS moves aggressively to address these issues before the 301 decisions must be made. End summary.

#### TRIPS IMPLEMENTATION

2. The Patent Law, the Commercial Code, the Law on Trademarks, the Law on Inventions, Industrial Design and Rationalization, the Law on Protection of Appellations of Origin of Products, and the Copyright Act, all implement Slovakia's TRIPS obligations. The Civil and Penal Codes implement obligations with regard to enforcement. TRIPS has been valid in Slovakia since 1995, but industry sources report that implementation and enforcement, despite some improvement, still remain problematic.

3. Slovak law remains problematic because it fails to harmonize data exclusivity with market authorization, and this raises potential conflicts with the country's WTO obligations. Data exclusivity is drastically weakened because the GOS recognizes the date of first marketing authorization in any EU country as the start of the six-year period of protection in Slovakia, but does not accept the corresponding EU marketing authorization. Since Slovak marketing authorization often takes two or three years longer than its EU equivalent, the six-year period of data exclusivity protection is drastically reduced. In an effort to placate disgruntled industry members, in 2002 the GOS passed a law offering a 10-year period of data exclusivity for "high technology" drugs. However, in 2003 the GOS returned to a six-year period of protection.

4. Foreign pharmaceutical manufacturers continue to complain that the GOS allows competitors to sell drugs that are protected by valid patents. Reportedly, the GOS has told the patent holders to sue the infringing companies directly, rather than getting involved itself or denying the guilty companies legal approval to sell the disputed drugs in the first place. Industry sources complain that Slovak legislation is unclear and that GOS officials do not understand who has responsibility for enforcement of various laws, or even that patents are held on certain drugs. Currently, at least one foreign pharmaceutical manufacturer's infringement case is caught between two GOS offices that each say the other is responsible for the issue.

5. In 2002, Slovakia became a member of the EPO, acceding to all of the appropriate regulations, including the Convention on the Grant of European Patents and the Protocol on Centralization of the European Patent System. According to Lubos Knoth at the Slovak Industrial Property Office (SIPO), Slovakia now provides European patents with the same level of protection as they enjoy in other EPO members. Moreover, licensed Slovak attorneys can now represent their customers in the EPO.

## OPTICAL MEDIA

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16. According to the Slovak Anti-Piracy Union (SAPU), the problem of video piracy has decreased significantly since 2002. The practice of video rental shops buying one legal copy of a video and then making several pirated copies, as well as the presence of pirated videos at flea markets, is now rare. On the other hand, counterfeited DVD's, primarily of Ukrainian and Russian origin, have started to become more common. Efforts by the police, tax authorities and customs

officers to monitor this situation have been commendable. According to a SAPU official, in 2003 up to 1,000 DVDs were seized and five or six individuals were arrested and put on probation for a period of 2 years. Generally, Slovakia is a transit-and-target country rather than a producing nation, as it has no visual media pressing plants. However, Sky Media, a Swiss company reportedly with Russian interests, plans to open Europe's largest CD-rom and DVD production facility in Slovakia later this year.

17. Although some progress has occurred in the area of music media, further improvement is essential. According to Slavomir Olsovsky from the International Federation of the Phonographic Industries (IFPI), legislation has been to a large extent harmonized, but enforcement is still lacking because of the insufficient skills and experience of police and customs officers. A flea market in Eastern Slovakia's largest city, Kosice, was recently the site of a major police action, during which dozens of music CDs and other goods were confiscated, and forty people were arrested for selling illegal merchandise. The number of home manufactured, or so-called "burned" CD's has likely climbed significantly due to the increasing penetration of personal computer copiers. There are no industrial facilities to press pirated and/or counterfeited CD's in the country.

## COMPUTER SOFTWARE

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18. Computer programs are protected as literary works, according to Section 7(1)a of the Copyright Act. Use of unlicensed computer programs is a crime, which carries a sentence of up to five years in prison or a financial penalty. Since 2001, the Slovak Police Presidium has operated a special independent office dedicated to computer-related crime. Generally, Slovakia is a consumer of pirated software but not a significant producer, and most of the pirated goods come from Ukraine, Russia and Poland. Problems persist regarding Slovakia's personal computer gaming clubs, which continue to violate computer licensing laws. In 2003, Slovak police conducted raids at 12 Internet cafes in the city of Nitra, seizing 116 personal computers that contained illegal software.

19. According to industry experts, software piracy has noticeably decreased in Slovakia. Microsoft's Bill Gates said during his visit to the country in January 2004, "We have registered a decline in software piracy in Slovakia." Based on the Microsoft's Enterprise Agreement with the GOS signed in 2002, all copyrights of Microsoft software being used in the state administration have been purchased by Slovak authorities for a total of USD 13 million (representing a 65 percent discount on the regular price). In 2001, a similar agreement was signed between Microsoft and the Slovak Chamber of Physicians and in 2004, Slovakia joined Microsoft's worldwide project "Partners in education."

10. In October 2003, the Slovak branch of the U.S. based Business Software Alliance (BSA) launched a nationwide campaign to fight illegal software. Together with the police, the BSA sent out 100,000 letters to entrepreneurs reminding them that the use of unlicensed products was against the law. Ads on local radio stations relayed the same message. The International Planning and Research Corporation assigned Slovakia a piracy rate of 45 percent for 2002, the second lowest figure in the region, down from 66 percent in 1994. A 2003 study by BSA and the IDC Company suggested that if Slovakia reduced its software piracy rate by 10 percentage points, its IT sector could grow to nearly USD 1 billion annually by 2006, from USD 545 million in 2002.

## TRADEMARKS

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11. Trips obligations on trademarks, bringing Slovakia into conformation with EU legislation, came into effect in 2002. In addition, Slovakia passed a law on customs measures regarding the import and export of illegal and counterfeit goods to comply with TRIPS articles dealing with customs and border control. However, implementation is weak along the Ukrainian border, which is considered by experts to be an easy target for pirates.

12. An amendment to the Act on Trademarks came in effect on February 1, 2004, granting European "community" trademarks

validity in Slovakia after its accession to the EU on May 1, 2004. Existing community trademarks will automatically be valid in the enlarged EU. While the holders of existing

national or international trademarks of similar appearance may not contest this automatic extension of existing community trademarks, they can protect their rights by applying for a ban on the use of existing similar community trademarks in Slovakia if their trademark was previously registered. In addition, commencing November 1, 2003, trademark holders can file objections to new applications for the registration of community trademarks of similar appearance.

13. According to sources, illegal use of trademarks is not perceived to be a significant problem in Slovakia. The Customs Code makes it possible for Slovak Customs to seize counterfeited goods. (NOTE: Previously, this authority was granted only to the trademark owner himself). However, both customs and police are still not sufficiently trained regarding which trademarks are licensed in Slovakia.

#### DESIGNS

14. Protection of industrial designs by the 2002 Act on Designs, conforms to EU standards. After accession to the EU, the protection afforded designs in existing member states will automatically apply in Slovakia, just as Slovak businesses will be able to take advantage of the same protection for their designs in the enlarged EU.

#### DESIGNATION OF ORIGIN

15. In the area of designation of origin, Slovak legislation (Act. 466/2003) conforms to Council Regulation (EC) No. 535/97 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

#### ENUMERATION LEGISLATION

16. Compensation of enumeration is defined by the Copyright Act, which entered into effect on January 1, 2004. The law imposes a six percent levy on all recording carriers such as CD's and video and audiotapes, and a three percent levy on all recording devices such as computers, video recorders, DVD players and other reprographic appliances. Slovakia is the only country in Europe to also imposed a 0.5 percent levy on all hard discs in computers. The proceeds from these levies go to industry rights holders, including foreign entities, although the exact amounts are difficult to calculate and vary according to bilateral and multilateral agreements. For example, the Slovak Performing and Mechanical Rights Society (SOZA) is responsible for distributing compensation for U.S.-made music recordings to the American Society of Composers, Authors and Publishers.

#### INTERNET PIRACY

17. In 2003, the SAPU, responsible for protection of movie industry rights, discovered 57 websites offering up to 700 movie titles in the form of burned CDs in 2003. SAPU has worked with the police in an effort to close down the websites and prosecute the administrators. Most of the sites had operated on an order-only base (no titles in stock). The BSA, responsible for monitoring software-related crime, reported that for the first time ever, an individual in Slovakia had received a sentence of one-year of probation for the crime of selling computer programs through the Internet.

#### IPR ENFORCEMENT

18. According to the SIPO, Slovakia's TRIPS obligations are implemented through the Civil and Penal Codes. The Slovak Customs Directorate is responsible for border enforcement, while the Slovak Police Presidium under the MOI is responsible for cases occurring within Slovakia. The State Institute for Criminology has a department that specializes in determining whether goods are pirated or genuine. Legal representatives of specialized organizations protecting intellectual property rights are often invited to assist in determining the size of damage and applying compensations. A lack of experience on the side of executing bodies still persists a major obstacle in IPR enforcement.

19. In 2003, police seized around 6,000 music CD's (in audio or MP3 format), the overwhelming majority of which were burned, not industrially produced. This compares to 7,500 CD's in 2002; 7,630 in 2001; 13,859 in 2000, and 26,500 in 1999. Experts partially blame the decline on police incompetence, but also admit that fewer people are

purchasing pirated CD's as household "burning" becomes more common. According to SAPU's statistics, in the area of movies, the police made 114 raids on flea markets during

2003, and seized 467 videocassettes, 316 DVD's and 560 CD's with movie content.

120. In addition to enforcement, prosecution remains a problem. Slovakia still has no specialized IPR prosecutors or police, there are no formal procedures or registrations required for lawyers seeking to adjudicate IPR cases, and punishment for IPR crimes remains inadequate. If a pirate obtains a skilled lawyer, he can often be acquitted. Further, most pirates who are prosecuted receive light sentences, such as small fines or probation, although they can be sentenced for up to five years in prison in case of breaching copyright rights and up to three years in prison in case of violating industrial property rights. To date, no persons convicted of piracy have served prison terms.

121. There are no dedicated courts for the adjudication of IPR cases in Slovakia. However in 2003, the GOS established a panel of three judges to adjudicate IPR cases at three regional courts, in Banska Bystrica, Kosice and Bratislava. The Ministry of Justice, in cooperation with the SIPO, conducted intensive training of assigned judges on IPR and related issues.

#### WCT AND WPPT COMPLIANCE

122. Obligations from WIPO's Copyright Treaty (WCT) and WIPO's Performance and Phonograms Treaty (WPPT) were implemented into the Slovak Copyright Act in 2000. Slovakia became party to WCT and WPPT in 2002. Moreover, a new Copyright Law (618/2003), effective from January 1, 2004, has also been brought into compliance with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

#### COMMENT

123. We do not believe piracy is a major problem in Slovakia. Authorities have been generally cooperative with aggressive private sector efforts to combat piracy of various products protected by IPR legislation. However, weak data exclusivity protection remains a major concern and we believe it warrants keeping Slovakia on the Special 301 Watch List. We are encouraged by Slovakia's membership in various international IPR organizations and hope it will lead to greater patent protection within the pharmaceutical industry. If so, we would call for Slovakia to be removed from the Special 301 List in the future. Post will continue to lobby hard for actual implementation of laws protecting patent information, and we urge USG officials to raise the importance of this issue with the Slovak embassy in Washington as well.

THAYER

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